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OFFICE OF PETITIONS

In re Application of :
Pierre P. Repper, et al. : DECISION ON PETITION
Application No. 09/884,828 : UNDER 37 CFR 1.78(a)(3)
Filed: June 18, 2001 : AND 37 CFR 1.78(a)(6)
Atty Docket No. 932-CAL :
:

This is a decision on the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6), filed November 5, 2004, to accept an unintentionally delayed corrected claim under 35 U.S.C. §§120, 365(c) and 119(e) for the benefit of the prior-filed applications

The petition is **Granted**.

A petition for acceptance of a claim for late priority under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). In addition, the petition under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) must be accompanied by:

- (1) the reference required by 35 U.S.C. §§ 120 and 119(e) and 37 CFR §§ 1.78(a)(2)(i) and 1.78(a)(5)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR §§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional where there is a question whether the delay was unintentional.

A reference to the prior-filed nonprovisional application has been included in an amendment embodied in the instant petition. Petitioner is reminded that, since different matters may be considered by different branches or sections of the United States Patent and Trademark Office, each distinct subject, inquiry or order must be contained in a separate paper. See 37 CFR 1.4(c).

The instant nonprovisional application was filed after November 29, 2000, and the corrected claim for priority herein is submitted after expiration of the period specified in 37 CFR

§§ 1.78(a)(2)(ii) and 1.78(a)(5)(ii). *See* 35 U.S.C. §§ 120 and 365(c) and § 119(e). Accordingly, having found that the instant petition satisfies the conditions of 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) for acceptance of an unintentionally delayed corrected claim for priority under 35 U.S.C. §§ 120 and 365(c) and § 119(e), the petition to accept an unintentionally delayed claim of benefit to the prior-filed applications is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed applications under 37 CFR §§ 1.78(a)(3) and 1.78(a)(6) should not be construed as meaning that the instant application is entitled to the benefit of the filing date of the prior-filed applications. In order for the instant application to be entitled to the benefit of the prior-filed applications, all other requirements under 35 U.S.C. §120 and 1.78(a)(1) and (a)(2) and under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed applications should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon.

A corrected Filing Receipt, which includes the priority claim to the prior-filed applications, accompanies this decision on petition.

Any questions concerning this matter may be directed to Sherry D. Brinkley at (571) 272-3204.

This application is being forwarded to Technology Center Art Unit 3749 for consideration by the Examiner of the amendment filed November 5, 2004, including consideration by the examiner of the claim under 35 U.S.C. § 120 and 365(c) and 37 CFR 1.78(a)(2) for the benefit of the prior-filed nonprovisional application, and for consideration of the claim under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(5) for the benefit of the prior-filed provisional application embodied in the petition.

Telephone inquiries related to this decision should be directed to Sherry D. Brinkley at (571) 272-3204.


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ATTACHMENT: Corrected Filing Receipt